UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GIANT EAGLE, INC.,

Respondent,

and **Cases 06–CA–188991**

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 23, CLC,

Charging Party.

Counsel:

Clifford E. Spungen, Esq. (NLRB Region 6)
of Pittsburgh, Pennsylvania, for the General Counsel

Glenn M. Olcerst, Esq., Stephanie M. Weinstein, Esq., Susan Gromis Kaplan, Esq. and Daniel B. Mullen, Esq. (Marcus & Shapira LLP),
of Pittsburgh, Pennsylvania, for the Respondent

Megan M. Block, Esq. (Healey & Hornack, P.C.)
of Pittsburgh, Pennsylvania, for the Charging Party

DECISION

INTRODUCTION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. This case involves campaign tactics of a grocery store chain facing a union representation election in a small seven-person unit. With the election less than a month away, the employer conditioned the disclosure to employees of details of upcoming wage and health insurance changes on the employees securing a "waiver and release" from the union, in which the union would agree not to object or file unfair labor practice charges over the employer's preelection disclosure of this information. In a separate incident, also in anticipation of the election, the employer disclosed to all voting employees that one of their prounion coworkers had applied for a promotion to another store. The employer then announced that it would not consider the employee for the promotion unless employees obtained a waiver from the union promising not to file charges or objections should the employee be granted the new position.

When the union waivers were not forthcoming, the employer refused to provide the advance wage and health care information until after the election and blamed the union. As to the employee seeking the promotion, she withdrew her application in response to the employer's targeting of her. Incorporating the union's failure to sign the waivers into its election efforts, the employer argued to employees in captive-audience meetings that the union's failure to sign the waivers was grounds to vote against the union, demonstrated the union's "extreme lack of respect," was an "insult to your intelligence," and showed that the union did not "did not want you to have the relevant information."

The government and the union allege that this conditioning of the disclosure of wage and benefits information on the union's waiver of rights was an unlawful violation of the National Labor Relations Act (Act). As discussed herein, I agree. This campaign tactic is a new version of a tactic long prohibited by the National Labor Relations Board (Board or NLRB): the identification of a benefit that employees want and the maneuvering to blame, disparage, and place the onus on the union for the failure of the employees to receive it. Such tactics are unlawful under settled precedent. The announcement to employees that the employee's application for a promotion would not be considered unless the employees obtained a waiver from the union is also alleged to be unlawful. As discussed herein, I find that the announcement constitutes an unlawful threat of a retaliatory change in promotion procedures based on employees having filed a union representation petition.

Finally, in a separate matter not involving waivers, a few weeks after the election and the subsequent certification of the union as the employee's bargaining representative, the employer, without consultation with the union, announced to employees in a mailing to their homes that it was going to freeze their pension plan. The government and the union allege that this announcement unlawfully interfered with employee rights under the Act. As discussed herein, I agree. Under the circumstances, the announcement to employees—who had recently voted to have union representation precisely to bargain matters such as retirement benefits—that their benefits would be unilaterally altered, without any reference to the union they had just selected, would have a reasonable tendency to be understood as in derogation of and even retaliation for the employees' selection of union representation.

STATEMENT OF THE CASE

On November 28, 2016, the United Food and Commercial Workers Union, Local 23 (Local 23 or Union) filed an unfair labor practice charge alleging violations of the Act by Giant Eagle, Inc. (Giant Eagle or Employer), docketed by Region 6 of the Board as Case 06–CA–188991. The Union filed a first amended charge in this case on January 31, 2017, a second amended charge on March 27, 2017, and a third amended charge on April 4, 2017. Based on an investigation into these charges, on April 28, 2017, the Board's General Counsel, by the Acting Regional Director for Region 6 of the Board, issued a complaint alleging violations of the Act and a notice of hearing. Giant Eagle filed an answer on May 5, 2017, denying all alleged violations of the Act.

A trial in this matter was conducted on January 25, 2018, in Pittsburgh, Pennsylvania.[1] Counsel for the General Counsel, for the Respondent, and for the Charging Party filed posttrial briefs in support of their positions on March 1, 2018.

On the entire record, I make the following findings, conclusions of law, and recommendations.

[1]At the commencement of trial, counsel for the General Counsel moved to make some minor amendments to the complaint, none of which were opposed. The motion was granted.

FINDINGS OF FACT

JURISDICTION

At all material times, Giant Eagle has been a corporation with an office and place of business at Settlers Ridge, located in Robinson Township, Pennsylvania. The Respondent operates approximately 250 grocery stores in Pennsylvania, Ohio, West Virginia, and Maryland, and is engaged in the retail sale of groceries and related products. During the 12-month period ending November 30, 2016, Respondent, in conducting the above-described operations, derived gross revenues in excess of $500,000, and during this same period, purchased and received at its Robinson Township facility goods valued in excess of $5,000 directly from points outside the Commonwealth of Pennsylvania. It is alleged, admitted, and I find, that at all material times the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is alleged, admitted, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

Background

Giant Eagle operates a regional chain of grocery stores in Pennsylvania, Ohio, West Virginia, and Maryland. The UFCW Local 23 represents a total of approximately 5,250 employees working at approximately 46 of the Employer's corporate-owned stores.

One of these stores is the Giant Eagle Market District store located in Settlers Ridge, in Robinson Township, Pennsylvania. Most of the store's 417 employees are represented by the Union, but the catering department was not, until the fall of 2016.

On September 15, 2016, the Union filed a representation petition with the NLRB seeking to represent the seven catering department employees at the Settlers Ridge store. A stipulated election was set for October 7, 2016. The Union won the election and was certified on October 17, 2016, as the bargaining representative of the store's catering department employees.

Giant Eagle conducts mandatory employee meetings to combat the union drive

In the run-up to the October 7 election, between September 15 and October 5, 2016, the Employer conducted multiple mandatory "captive audience" meetings with the catering department employees. The meetings covered topics such as wages, benefits, information about union dues and the union's financial and organizational structure, in addition to information about the NLRB voting process. The meetings were led by Giant Eagle HR Manager Daniel Guevara, who is the Regional HR manager for Giant Eagle stores from Erie, Pennsylvania, into the suburbs of Pittsburgh, including the Settlers Ridge store. The Employer's attorney, Glenn Olcerst, also played a prominent role in the meetings. The meetings were also attended by the store's HR official, Sue Martin, and Karen Priore who was HR director for Giant Eagle. Several of the meetings were attended by Mike Hamed, the executive store leader. With the exception of the September 29 meeting, the meetings included Attorney Olcerst reading from a written script that he had prepared.

Meetings were held September 15, 21, 26, 29, and October 5, with a morning and afternoon session on each of these days, with a different set of employees attending on any given morning and afternoon. There was also a "make-up" meeting held September 28, for one employee who missed the September 21 meeting. Each meeting was attended by between two and four catering department employees. The meetings were lengthy—employee witness Linda Zinkham recalled that the meetings generally lasted three hours.

Giant Eagle conditions disclosing information on upcoming wage and benefits changes on employees obtaining a waiver from the Union

In addition to listening to the employer representatives, the employees raised many issues and disclosed information about the union drive at these meetings.

For instance, at the September 15 meeting employees disclosed that employee Kelli Murphy had initiated the union drive in the catering department and had been responsible for getting union authorization cards signed. At the make-up meeting on September 28, the lone employee meeting with management indicated to Guevara "that the election vote was going to be four to three, four in favor of the union and three in favor of the company."

In addition, at the September 15 meeting, employees asked for information from the Employer about company financials, executive salaries, as well as information on the health and welfare benefits.

At the September 21 meetings, Attorney Olcerst read from a script stating the following to employees:

> As every one of you should already know, every October, GE sends health benefit plan notices and information on different benefit designs and new costs for open enrollment coverage for 2017.
>
> While we were going to wait for you to receive your standard notice, and not make this a campaign issue, you remember last week you specifically asked us to go back and cover health benefit comparisons—a topic which you noticed was completely missing from our slides.
>
> --We did not include a health comparison slide because we knew that there are health benefit changes being made in the plant throughout these departments throughout Pennsylvania at open enrollment in October.
>
> --while we always want to answer your questions, we are reviewing the special rules that apply to sharing the details with you about the company's 2017 plan now that a petition has been filed and an election scheduled—and we will get back to you at our meeting next week.

At the next meeting, on September 26, 2016, Olcerst again read from a script he had prepared. He reminded the employees that he had been reviewing "the special rules that apply to sharing the details with you about the company's 2017 [health care] plan now that an election has been scheduled—and we said we will get back to you today." Olcerst continued:

> Let me explain. If we withheld this across the board new plan from you, the union would file a charge of retaliation and discrimination claiming it was because of your interest in the union—and they would be right. If we tell you about the plan that applies to every union free department in every store in Pennsylvania, the union would file a charge claiming perhaps that we tried to buy off your vote even though GE is telling you that you will receive this 2017 plan without regard to your vote, or to the outcome of the election—you get it either way.

Olcerst then told the employees that

> Because of special election rules, the only way we can share the details with you is if you get the union to sign this release and waiver—and if they won't, explain that you cannot vote for the union.

In addition, at this September 26 meeting, Olcerst reminded the caterers that they had a merit increase/pay raise coming up. In years past the amount of the annual wage increase had been communicated to employees the last week of September or the first week of October, and then would go into effect in the mid-October paycheck.

Olcerst told the employees that they would get their increase without regard to the outcome of the election but that he would not tell them the amount that they would be receiving prior to the union election vote unless the Union agreed to sign a waiver that Olcerst would distribute to caterers at the meeting. According to Guevara, Olcerst told employees:

> We said that they deserved to have and know the amount of the wage increase before the election would take place, and then we described the Catch 22 situation that we were in if we withheld the merit increase from this catering group, we would have the retaliation and discrimination charge potentially filed by the union, and we said they would be right.
>
> In addition to that, [we] said if we did communicate the merit increase, it would be possibly challenged by the union, or if they thought it was too high of an increase and it looked like we were trying to buy off anyone's vote, that would be a challenge to the election. We also assured them no matter what the outcome of the vote was going to be, whatever merit increase was decided on was what they would get. . . .

Olcerst then turned to attacking the Union, stating: “Some of you expressed disbelief when I said that the union does not want you to get all the facts and relevant information. But just look at what has happened here.” Olcerst then criticized the union, asserting that the union had failed to disclose financial and bylaw information, misinformed employees of wage concessions and misled employees that the master contract would apply to them. Olcerst told the employees that the Union “did not care about what you wanted—just wanted your money.” Olcerst told the employee that the Union “should sign the waivers if you ask . . . . and if they refuse, you may decide that they don’t deserve your vote.”

At the September 26 meetings, Olcerst provided the caterers with two waiver forms to take to the Union—one for health care information, one for wage information. The first stated:

WAIVER AND RELEASE

I, _____, request UFCW local 23, sign this Release and Waiver since it is important for me to know the details of my 2017 Health Benefit Plan before I vote on whether I want to be represented by your Union. Without this information, I am unable to cast a fully informed vote in the upcoming election.

UFCW, Local 23, hereby agrees not to file any Objections or Unfair Labor Practice Charges related to Giant Eagle telling Event Planners/Caterers the open enrollment details of the 2017 Health Benefit Plan options routinely shared with TM's in October.

AGREED

_____

Authorized Representative

UFCW Local 23

The second waiver provided to employees stated:

WAIVER AND RELEASE

I, _____, request UFCW local 23, sign this Release and Waiver since it is important to me to know the amount of my merit increase before I vote on whether I want to be represented by your Union. Without this information, I am unable to cast a fully informed vote in the upcoming election.

UFCW, Local 23, hereby agrees not to file any Objections or Unfair Labor Practice Charges related to Giant Eagle telling Event Planners/Caterers the amount of the yearly merit increases they earned—which is routinely shared the first week of every October with Event Planning Team Members.

AGREED

_____
Authorized Representative
UFCW Local 23

Employee Linda Zinkham testified that Olcerst told the employees "that before they could tell us anything about our wages or benefits, we had to have this paperwork signed." Zinkham testified that Giant Eagle managers "indicated that the union was trying to hide stuff from us, that . . . they won't let you have the information that you want to have." Zinkham said that with regard to waivers, "they put it off on the union." Guevara recalled that employees were told "they could hand it [the waiver form] right to the union representative to have them sign it, or if they were not comfortable with that, they could potentially have a representative and they could fill in their names and give it to the representative to give to the union, and that the most important signature on the waiver and release was the union's." Guevara testified that employees were told that "we only needed one waiver to be returned, and then [the employee] asked how we should return it, and we basically said that—it was said that the choice was theirs, they could mail it in, they could

have the union mail it in, or they could hand it back to us if they needed to." An employee asked whether the information would not be provided if no one returned a waiver. According to Guevara, the managers said "yes, we were going to delay our communication on the health and welfare benefits as well as the merit increase in order to avoid any charges or potentially . . . having a second election."

Giant Eagle announces that employee Kelli Murphy is seeking a promotion and conditions interviewing her for the position on employees obtaining a waiver from the Union

Kelli Murphy worked for Giant Eagle from September 2009 until August 2017, beginning in high school. She worked at three different stores over the years. The final one was the Settlers Ridge store, and after working as a cashier, and then in customer service, Murphy worked in the catering department as an events planner.

In early September 2016, during the union organizing drive, Murphy applied for a lead position at Giant Eagle's Pine Township store location, a position that would not be at the Settlers Ridge store or in its catering department bargaining unit. Murphy applied for the position online through Giant Eagle's internal HR website. The processing and scheduling of promotion applications is handled by a recruiting team operating from corporate headquarters.

As noted above, during the September 15, 2016 mandatory meeting, Guevara and Olcerst first learned that Murphy had started the organizing drive in the catering department in the Settlers Ridge store. They also learned shortly thereafter that the vote in the election was likely to be four to three in favor of the Union.

Guevara learned of Murphy's application for the Pine Township job on the evening of September 28, when a corporate recruiter asked for an internal background check on her as part of the application process. Guevara was told by the corporate recruiter that Murphy was "the leading candidate." Guevara, Olcerst, and the other managers discussed what Guevara described as a "dilemma" due to their understanding that the vote was going to be 4-3, and their claim that it was urgent to fill the position before the election.[2]

Guevara and Olcerst decided to raise the matter of Murphy's job application in the September 29 mandatory meeting scheduled for the next morning. This was the first response Murphy received from anyone at Giant Eagle after submitting her application online some weeks before.

At the September 29 meeting, the employees were told that their coworker, Kelli Murphy, had applied for a leadership role at another Giant Eagle store. Olcerst presented the employees, including Murphy, with a waiver that he asked employees to have the Union sign as a condition for Giant Eagle considering Murphy for the Pine Township position. As employee and union bargaining committee member Linda Zinkham testified:

> We were told that Kelli had applied for the leadership role at the Pine Township location, and that she has—she was a very strong candidate, and it was between her and one other person, and that they really wanted to interview Kelli, but they were not able to interview Kelli unless we signed these waivers.

[2]In fact, the position was not filled until October 20, nearly three weeks after the election.

Murphy's recollection was similar, although she recalled that Olcerst said it was between her and two others. She recalled that Olcerst told the group that "he wanted to be able to consider me, "but the waiver needed signed in order to proceed with my interview process."[3]

Zinkham, who testified that she "felt like they were trying to drive a wedge into the bargaining unit and pit us against one another," told the Giant Eagle managers that "I'm not going to get this signed."

Murphy testified that "I was angry. In general, I felt like my personal HR information or what I considered personal information was being shared without my consent." Murphy asked in the meeting how this information "was relevant to the meeting." Olcerst responded to the group that "it was relevant because it was during an organizing drive."

Olcerst distributed the following waiver and release for employees to have the Union sign:

WAIVER AND RELEASE
PROMOTION TO LEADERSHIP POSITION

I, _____,[4] request that UFCW Local 23 sign this Release and Waiver related to Kelli Murphy's September 18, 2016 application to be promoted to a Catering Team Leader position.

UFCW Local 23, hereby agrees not to file any Objections or Unfair Labor Practice Charges in connection with the October 7, 2016 election and the Petition filed in Case 6-RC-184367 in the event Kelli Murphy is promoted to the requested Leader Position. However, in the event Ms. Murphy is not promoted, both the Union and Ms. Murphy specifically reserve the right to file Unfair Labor Practice Charges alleging discrimination and retaliation for Union activity and support—which will then be investigated by the NLRB Regional Office.

_____ _____
UFCW Local 23 Date

Murphy was upset by the events at the meeting. Later that morning, she requested a meeting with Olcerst and Guevara in the HR office. She told them she "wanted to know why they told my co-workers about my application, how was it relevant." Murphy testified that they reassured her that "they really wanted to consider me for the position, and that they wanted me to get the waiver signed." Murphy testified that she wanted the job—she told them she would get the waiver signed. Guevara testified that Murphy said she understood the reason for the waiver. She told Guevara and Olcerst that the Union was mad at her. Guevara testified that "she was very upset, I recall her very upset about the whole situation."

[3] I note that Zinkham and Murphy's account of what employees were told is undisputed and was, in any event, credibly offered. Guevara testified and did not dispute the employees' account on this point. Neither did Olcerst. Olcerst did testify that "Murphy's promotion application was always being processed, never halted, never conditioned on a waiver," but that is a different point. I credit Zinkham and Murphy's undisputed testimony that the employees were told that the application process would not proceed to interview without the waiver.

[4] The version of this document provided to Murphy had her name typed in after the word "I." Although not entirely clear from the record, it appears that the other employees were given the version of the Waiver and Release with a blank after the word "I."

Instead of seeking to have the waiver signed, Murphy went to the afternoon mandatory meeting and announced that "after thinking about it for a couple of hours" she "would withdraw her application" for the new position.

The next day, September 30, when the Giant Eagle corporate recruiter called her for an interview Murphy cancelled the interview.

On October 3, Olcerst requested that Murphy meet with him in the HR office. He told Murphy that he knew she withdrew her application and that he wanted to assure her that the "application had nothing to do with the organizing drive" and "that the company would give me until a week after the election cycle to reapply for the position." Olcerst told Murphy that her vote in the election would not be challenged.

Guevara maintained at trial that the fact that an employee applied for a new job is not "confidential," although he agreed that the Employer doesn't "walk around the store telling people that someone applied for a job." The only example he could give of the company telling coworkers who had applied for promotions involved a position where there were group interviews, something not applicable in the case of the position for which Murphy applied.

The final mandatory meeting before the election; Giant Eagle argues to employees that the Union's failure to sign the waivers is grounds to vote against the union

The final mandatory meeting with employees about the union drive occurred on October 5. At this meeting, Olcerst read from a script covering many of the issues that had been previously discussed in the campaign.

He indicated that at other Giant Eagle locations there had been second, third, and fourth elections conducted:

> —you have also raised legitimate issues about respect that we are not allowed address. But consider that the [union] that you are about to join—and are being asked to commit to pay dues to for the rest of your working life, is showing you an extreme lack of respect by not signing the waivers. All of you said across the table from me over and over "no problem," the waivers will be signed—all of them. Refusing to sign if you request it, is actually an insult to your intelligence if you think about it. You are fully capable of voting your mind and choice now with all the relevant information from both sides. GE will honor your choice and your vote. Refusing to sign the waivers means that the union will not. . . .
>
> That is why we asked you to ask them to sign the waivers. We don't want to go through this again any more than you do.
>
> -you volunteered that the union told you these waivers were "not kosher," not valid, and lots of other excuses. If it is true that the waivers are not valid, the union should have had no problem signing, since they would not be waiving anything.
>
> -No matter what they told you, other unions sign waivers just like the ones we gave you.

Giant Eagle then distributed samples of waivers from other campaigns that it had procured similar to the ones it sought to have signed here.

Olcerst also had some final words about the Kelli Murphy situation and the waivers. As he had in his October 3 private meeting with Murphy, he backtracked on the public demand he made in the September 29 meeting that the Murphy waiver had to be signed by the Union in order for Murphy to be considered for the new position. However, referencing the waiver demand, Olcerst urged employees to vote against the Union, in part because of the Union's unwillingness to sign the waivers. He told employees:

> —Kelli was given 4 assurances:
>
> First, that GE was never going to and would not, challenge her vote on Friday,
>
> Second was assured that she would work in your department through the election date, without regard to the outcome of her interview;
>
> Although Kelli cancelled her promotion interview, she was assured that she could reschedule it either before, or after the vote.
>
> And finally that as a courtesy to her, and to avoid the possibility of a second vote, we were holding the decision on that leadership position until shortly after the election. To understand better what kind of Company you work for, Kelli deserved to know before the election where she stands. The rest of you deserved to know before you vote if Kelli will be remaining with you or not. It is as simple as that.
>
> What is not fair is that the person soon to start in your department to replace Tia will never get a chance to vote at all. Keeping new people who work with you from voting is another reason why the union rushed to file the petition. Again, the union only cares about the votes it thinks will help—although no one ever knows whose ballots are whose that are being dropped into the box.
>
> -A union will and should sign a waiver during an election campaign as a demonstration of respect, because they believe in members having all the relevant information and to demonstrate that they will listen to requests, and do what soon to be members demand. Unions sign the Waiver if they really stand for giving members a voice.
>
> Consider what happened here. The union refused to sign any waivers and tried to cut the time before your election in half—so you would have your vote before you received your 2017 benefit information during open enrollment, because they did not want you to have the relevant information in the first place.
>
> -As a result, you should decide to vote no—and tell them as clearly as you told us, that you are not going through this again.
>
> -one would think that anyone really listening to all that information—which was obtained either from our union contracts, from the union itself, or the United States government, would vote No
>
> --that would be the reasoned and objective conclusion

The election was conducted October 7. The Union won and was certified as the employees' bargaining representative on October 17.

Postelection, Giant Eagle announces to unit employees that their pensions are going to be frozen

On or about November 9, 2016, Giant Eagle sent to employees at their homes a letter and notice of its intention to freeze (i.e., end future benefit accruals to) the employees' pension plan as of the end of the year, and in its place to introduce a discretionary employer contribution to the employer-sponsored 401(k) plan. A brochure was included that described the changes.

The notice was a memo titled "IMPORTANT 204(h) NOTICE" from the Giant Eagle, Inc. Retirement Administrative Committee, and dated November 9, 2016. It stated, inter alia: "Giant Eagle, Inc. (the "Company") has taken action to amend the Giant Eagle, Inc, Income Security Plan (the "Pension Plan") to stop all future benefit accruals as of the close of business on Decenter 31, 2016. This means that, effective January 1, 2017, you will no longer earn new or additional benefits under the Pension Plan." The accompanying letter on Giant Eagle letterhead was from Lora Dikun, senior vice president, human resources & chief people officer. The letter from Dikun, dated November 2016, states, inter alia: "Giant Eagle, Inc. (the "Company") is making important changes to your current retirement program," and gives a description of the changes. Dikun concludes by stating, "I recognize that change can be concerning."

The pension freeze was decided upon by action of the board of directors in March 2016, and affected approximately 11,000 Giant Eagle employees, generally corporate and nonunion employees. Giant Eagle did not provide the Union with notice of the changes until December 8, 2016. There is no evidence that any unit employee had notice of this significant planned change in retirement benefits until receiving the November 9 notice. The notice and letter appear to be a standard letter distributed broadly to nonunion employees. The mailed materials make no reference to the unit employees specifically, the recent representation election, or to when or how Giant Eagle decided to make this unilateral change to the pension plan.

Analysis

I. Conditioning preelection disclosure of information about upcoming wage and benefits changes on the employees seeking and securing a waiver from the Union

The General Counsel alleges that Giant Eagle violated Section 8(a)(1) of the Act by telling employees that it refused to provide wage and benefits information before the election unless the Union signed a waiver and release of rights to object or file charges. I agree. In particular, the calculated use of the waiver issue to blame the Union for Giant Eagle's refusal to provide employees with details of upcoming wage and benefits adjustments before the election is an obvious violation of the Act under settled precedent.

The governing and background principles are established, uncontroversial, and not disputed by Giant Eagle. Thus, "[i]t is well established that during an organizational campaign an employer must decide whether or not to grant benefits in the same manner as it would absent the presence of a union." *Diamond Motors, Inc.*, 212 NLRB 820, 820 (1974). Another way of

assessing the employer's burden in such situations is that it must establish that it decided to act "precisely as it would if the union were not on the scene."[5]

It is equally well established that an exception to the above-rule exists for postponing until after the election an already planned benefit where it was "made clear" to employees that the delay was not dependent upon the results of the union election organizing *and* it was "made clear" to employees that the "sole purpose" of the postponement is to avoid the appearance of influencing the election's outcome.[6] At the same time, in acting on the exception, it is decidedly unlawful to attribute or shift the onus for the delay to the union.[7]

[5]*United Airlines Services Corp.*, 290 NLRB 954 (1988); *MEMC Electronic Materials,* 342 NLRB 1188 (2004); *Lampi, L.L.C.*, 322 NLRB 502, 502 (1996) ("As a general rule, an employer's legal duty in deciding whether to grant benefits while a representation proceeding is pending is to decide that question precisely as it would if the union were not on the scene"); *Emergency One, Inc.*, 306 NLRB 800, 807 (1992) ("the Board's general rule is that an employer's legal duty during a preelection campaign period is to proceed with the granting of benefits, just as it would have done had the union not been on the scene"); *Earthgrains Baking Cos.*, 339 NLRB 24, 28 (2003) ("The Board law is quite clear that, in the midst of an on-going union organizing or election campaign, an employer must proceed with an expected wage or benefit adjustment as if the organizing or election campaign had not been in progress"), enfd. 116 Fed. Appx. 161 (9th Cir. 2004).

[6]*Atlantic Forest Products, Inc.*, 282 NLRB 855, 858 (1987); *Earthgrains Baking*, supra at 28; *Uarco*, 169 NLRB 1153, 1154 (1968). See, *Kauai Coconut Beach Resort*, 317 NLRB 996 (1995) (overruling election objection to announcement of amount of pay increase where "there is no evidence" that announcement was "for any reason other than to avoid the appearance of interference with election").

[7]*Atlantic Forest Products, Inc.*, 282 NLRB 855, 858–859 (1987) ("In making such announcements, however, an employer must avoid attributing to the union the onus for the postponement of adjustments in wages and benefits, or disparaging and undermining the union by creating the impression that it stood in the way of their getting planned wage increases and benefits") (internal quotations and bracketing omitted); *Earthgrains Baking Cos.*, 339 NLRB 24, 28 (2003) ("In making such an announcement, however, an employer acts in violation of Section 8(a)(1) of the Act by . . . undermining the union by creating the impression it impeded the granting of the adjustment. . . . .), enfd. 116 Fed. Appx. 161 (9th Cir. 2004); *Grouse Mountain Lodge*, 333 NLRB 1322, 1324 (2001) (unlawful to announce in memorandum that benefits could not be give while union organizing efforts were active as "the memorandum had the effect of telling employees that, but for the Union's presence, they would have obtained these benefits earlier"), enfd. 56 Fed. Appx. 811 (9th Cir. 2003); *Emergency One.*, supra ("Thus, if an employer withholds wage increases or accrued benefits because of union activities, and so advises employees, it violates the Act. However, where employees are told expected benefits are to be deferred pending the outcome of an election in order to avoid the appearance of election interference, the Board will not find a violation") (cited cases omitted); *KMST-TV, Channel 46*, 302 NLRB 381, 382 (1991) (announced delay in employee evaluations and raises to avoid appearance of trying to influence employee votes was lawful because "The Respondent made no attempt to capitalize on the suspension of the evaluations to discourage employees' union activity").

More generally, even outside the context of a union representation election, an employer violates Section 8(a)(1) of the Act by blaming the union for the employer's failure or inability to provide employees a benefit.[8]

Consistent with this prohibition on blaming the union for the withholding of a wage or benefits adjustment, the Board has held—in a case that is indistinguishable in any relevant way from the instant case—that an employer violates Section 8(a)(1) during an election campaign by conditioning the grant of a benefit on the union waiving its right to file objections or charges with the Board where the employer "directed the employees' attention to the union aspect of the matter . . . by announcing a desire to offer immediate benefits to its employees and then shifting to the Union the onus for not instituting these benefits." *McCormick Longmeadow Stone Co.*, 158 NLRB 1237, 1237, 1242–1243 (1966).[9]

[8]See, e.g., *Lafayette Grinding Corp.*, 337 NLRB 832, 839 (2002) ("By its statement to employees that the wage increase was being withdrawn because of the possibility of an unfair labor practice charge the Respondent violated Section 8(a)(1) of the Act"); *RTP Co.*, 334 NLRB 466, 467 (2001) (employer violated Sec. 8(a)(1) by falsely blaming the union for preventing a wage increase), enfd. 315 F.3d 951 (8th Cir. 2003).

[9]The Board's decision in *McCormick Longmeadow Stone* is unusually on point. In concluding in *McCormick Longmeadow* that the employer's action in seeking the union waiver interfered with employees' choice of the union as their bargaining representative, the Board highlighted that the request was not made only to the union, but rather, also communicated to all employees, demonstrating, that "the Respondent, on its own initiative, directed the employees' attention to the union aspect of the matter. Id. at 1237. Similarly, Giant Eagle's approach of not directly appealing to the union, but exclusively to the employees, in mandatory meetings, was calculated to directly interfere with the employees' relationship with the union. The Board in *McCormick* "further f[ound] that, through this conduct, the Respondent sought to discredit the Union and discourage membership therein by announcing a desire to offer immediate benefits to its employees and then shifting to the Union the onus for not instituting these benefits." Id. This was precisely the tack taken by Giant Eagle when signed waivers were not forthcoming. Finally, in reasoning on the issue adopted by the Board, the trial examiner in *McCormick Longmeadow* explained that:

> [T]he Company violated the Act by conditioning its grant of that benefit on the Union's waiver, and so advising all employees. First, the very fact that the Company directed the employee's attention to the union aspect of the matter, instead of simply meeting the economic exigency in a lawful way, eliminates the consideration which underlies the holding that the wage increase could lawfully be granted, namely that it was unrelated to any question of employee organization. Second, the right of access to Board channels should be kept open, and even though a charge based on the wage increase might eventually prove groundless, the Union should not be forced to waive its right to file a charge to test that question. If the charge would indeed prove groundless, the Company derives ample protection from that fact alone, and if the charge should prove well founded, the Company manifestly should not be able to insist on the waiver. In short, the Company should not be able to shift to the Union the onus of deciding whether the projected action is or is not lawful. Finally, in withholding the wage increase because of the Union's failure to waive its right to file a charge, the Company deprived them of benefits they would have enjoyed but for their resort to self-organization. [Id. at 1242–1243].

Here, Giant Eagle—openly and aggressively—utilized its waiver scheme to discredit the Union and "direct[ ] the employees' attention to the union aspect of the matter." *McCormick Longmeadow Stone,* supra at 1237. From the first mention of waivers on September 26, Giant Eagle insisted to employees that the Union "was trying to hide . . . information that you want to have," and that the Union's failure to sign the waivers would be a good reason to vote against the Union. ("if they won't, explain that you cannot vote for the union"; "if they refuse, you may decide that they don't deserve your vote.") Later in the campaign Giant Eagle turned to vituperative attacks on the Union related to the waivers. ("Refusing to sign [the waivers] if you request it is actually an insult to your intelligence"; "GE will honor your choice and your vote. Refusing to sign the waivers means that the union will not"; union "should sign a waiver . . as a demonstration of respect . . . . Unions sign the Waiver if they really stand for giving members a voice").

The problem with Giant Eagle's tactics is the use of the waivers to blame the union, to "attribut[e] to the union the onus for the postponement . . . or disparaging and undermining the union by creating the impression that it stood in the way." *Atlantic Forest Products, Inc.*, 282 NLRB at 858–859. As noted, "an employer acts in violation of Section 8(a)(1) of the Act by . . . undermining the union by creating the impression it impeded the granting of the adjustment." *Earthgrains Baking Cos.*, 339 NLRB 24, 28 (2003).

Rather than avoiding the appearance of influencing the election, Giant Eagle directly utilized the waivers to impugn the Union and invoked the prospect that—but for the union—it would have provided the employees with information employees wanted. Giant Eagle aggressively relied on this as a basis to appeal to employees not to vote for the union.

The foregoing is straightforward. What of Giant Eagle's defense? How does it seek to distinguish the on-point case of *McCormick Longmeadow Stone*, supra, and others of its type?

The essence of Giant Eagle's entire defense is the unsupported claim that the preelection disclosure of details about an upcoming wage or health benefit change is not a *benefit* that Board precedent precludes Giant Eagle from manipulating in order to influence the election. (See, R. Br. at 10 fn. 4.) Giant Eagle claims that the information employees sought, and that it withheld, was simply potentially relevant campaign information—rather than a withheld benefit.

This defense is sophistry. Giant Eagle claimed it wanted to tell employees the amount of their upcoming wage and benefit changes. As Giant Eagle insisted to employees, having this information would be a benefit for employees. This information was *the benefit* that Board precedent prohibits an employer from blaming the union for the employees' failure to receive.

In this regard it is highly significant that Giant Eagle repeatedly asserted to employees that it needed a waiver in order to protect itself from legal action should it disclose the wage and benefits information before the election. Giant Eagle even told employees that the Union "would be right" in its legal charges if Giant Eagle disclosed the wage and health insurance information before the election. This is a stark albeit implicit admission by Giant Eagle that it knew that the disclosure of the information fell within the Board's regulatory scheme governing the announcement of upcoming benefits during an election campaign. This was the very basis on which Giant Eagle claimed it needed the waiver. In light of this admission it is not convincing for Giant Eagle to now claim that the Board's rules do not apply to the withholding of information about upcoming benefits, but only to the withholding of the benefit itself.

Had Giant Eagle merely announced to employees that in order to avoid any appearance of influencing the election it was going to withhold the announcement of the amount of wage increases until after the election—an exception to the general duty to act as if the union were not on the scene that has long been accepted by the Board—and had Giant Eagle merely announced that it would not provide information about upcoming health benefits changes until later in October, as it normally does, this would be a different case. See, *Kauai Coconut Beach Resort*, 317 NLRB 996 (1995) (overruling objection to announcement of delay in amount of upcoming pay increase where "there is no evidence" that announcement was "for any reason other than to avoid the appearance of interference with election").

But, quite obviously, Giant Eagle had no interest in making such a limited announcement. Giant Eagle's interest was in finding something that employees wanted—the information on the upcoming wage and benefit changes—and crafting a way to blame the Union for Giant Eagle's unwillingness to provide it to employees before the election. The waivers were a device to place the onus on the Union for Giant Eagle's withholding of this benefit. It is a tactic long condemned by the Board as reasonably likely to interfere with employees' rights under the Act. I find the violation as alleged in the complaint.

II. Conditioning further consideration of employee Murphy's job promotion on receipt of a waiver

Giant Eagle's announcement to employees on September 29, that a waiver of the Union's right to object to Kelli Murphy's promotion would be required before Murphy could be interviewed for the new job, was also unlawful. This announcement let employees know that a new and discriminatory requirement for the promotion was being imposed on Murphy in retaliation for employees having filed a union representation petition.

The idea was hatched between the evening of September 28, when Guevara and Olcerst learned that Murphy had applied for a job, and the meetings that began the morning of September 29. With the recent demand for wage and benefits information waivers on its mind, Giant Eagle quickly concocted this demand for a waiver as a new condition on Murphy's promotion.

However, unlike the demand for a waiver regarding upcoming wage and benefit adjustments, on September 29, there was no discussion of Murphy being able to apply after the election or have the interview after the election. On September 29, the waiver was presented as a condition precedent to Murphy being allowed to proceed—no waiver, no new job.

Thus, this was the announcement to employees of a new condition for Murphy's promotion process—not merely the postponing of a planned benefit until after the election. This was the announcement of the imposition of a new burden on her job application that was directly attributable to the employees' representation activity. The fact that Olcerst maintained at trial that Giant Eagle did not did not act on its threat, and never intended to act on its threat, is beside the point.[10]

[10]I note that the record is clear that Giant Eagle told employees in the September 29 meeting that obtaining the waiver was a condition for going forward with an interview of Murphy for the promotion. Giant Eagle's denial of this on brief (R. Br. at 2 fn. 1) is not in accord with the record evidence.

It is true, as Giant Eagle stresses, that Giant Eagle backed down from this threat of discriminatory treatment of Murphy. Its threat backfired when Murphy withdrew her name from consideration rather than endure this discriminatory adjunct to the application process. At that point, Giant Eagle tried to assure Murphy, and later the employees, that the position and interview would be available to her after the election. But it is notable that these ameliorating promises came after Murphy withdrew. Contrary to Giant Eagle's claim, I do not agree that the threat not to consider Murphy's application unless employees obtained a waiver from the union was remediated by the fact that Giant Eagle ultimately withdrew this condition and urged Murphy to pursue the promotion—after Murphy withdrew her application. Nor was it attenuated by the fact that the corporate recruiter called Murphy to schedule an interview the day after the threat was made to Murphy and the other employees. Neither changes the fact that on September 29, Giant Eagle expressly announced to employees that it was absolutely conditioning further consideration of Murphy's application on the employees' obtaining waivers, a discriminatory approach to job promotions that obviously would have a reasonable tendency to interfere with employee rights.[11]

It is worth pointing out that the "dilemma" Giant Eagle claims motivated it to devise the Murphy waiver appears to have been wholly avoidable, if not invented. Indeed, it seems likely that waiver demand was a fig leaf—an excuse—to justify Giant Eagle's enthusiastic rush to disclose to employees that the employee who instigated the union election was trying to leave the unit. While this disclosure was an admitted departure from the normal HR practices, Giant Eagle justified it with the claim that Giant Eagle needed to disclose it so that employees could obtain a waiver from the union and Giant Eagle could proceed to interview and hire Murphy before the election. Given that Giant Eagle did not hire anyone for the position until three weeks after the election, the dilemma appears to be one of Giant Eagle's own making, created to justify the publicizing of Murphy's job application.[12]

III. The inclusion of a place for employees to identify themselves on the waiver forms

The General Counsel also argues that the waiver forms distributed by Giant Eagle—the wage, health benefits, and Murphy promotion waiver—violated Section 8(a)(1) because they provided for employees to identify themselves to the employer as having sought the union's waiver. I agree that this is a legitimate concern. However, given that this is not pled in the complaint as a separate violation, and given that the General Counsel does not seek a remedy or order specific to this argument (see GC Br. at appendix A), I treat this as additional argument, not a separate alleged violation. Having found that the Respondent violated the Act as alleged in the complaint, I do not reach this additional theory.

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[11]Giant Eagle's subsequent withdrawal of the waiver threat did not meet the requirements for repudiation of unlawful conduct required for remediation. See, *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). There was no admission of wrongdoing, and no assurance of future noninterference with employee rights. *Passavant*, supra at 138–139. Indeed, in the speech to employees conveying the assurances to Murphy, Giant Eagle reiterated that the union should have signed the waiver, and doubled down on its insistence that it was the Union's fault that the employees were being deprived of wage and benefit information before the election. Thus, the "assurances" were not "free from other proscribed illegal conduct." *Passavant*, supra.

[12]To be clear, the disclosure to the employees of Murphy's interest in other employment is not alleged to be a violation of the Act, and I do not find it to be or consider whether it was.

IV. Announcement to employees of unilateral changes to retirement benefits

The General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act on or about November 9, 2016, by announcing to unit employees, in a mailings to their homes, of adverse unilateral changes to their retirement benefits that would go into effect as of January 1.[13]

Where a union is the collective-bargaining representative, the announcement of unilateral changes to the employees can independently violate Section 8(a)(1) of the Act. *The Finley Hospital*, 362 NLRB No. 102, slip op. at 5 (2016) ("We also adopt the judge's finding that the Respondent independently violated Section 8(a)(1) when it informed employees that it would no longer give annual increases following the expiration of the 2005 agreement. Contrary to the Respondent's argument that a violation of Section 8(a)(1) requires an explicit threat or coercion, the announcement of the unilateral change to the employees itself is unlawful"), reversed on other grounds, 827 F.2d 720 (8th Cir. 2016); *Marion Memorial Hospital Corp.*, 335 NLRB 1016, 1019, 1026 (2001) (announcement to employees of unilateral change in terms and conditions of employment independently violates 8(a)(1)), enfd. 321 F.3d 1178 (D.C. Cir. 2003).

Here, employees received notice of a significant and adverse benefits change just one month after choosing union representation. There was no hint from the materials sent to employees that this decision was decided on by Giant Eagle before the representation election. There was no recognition that the employees were now represented by the Union, and that generally the employer would have to bargain such changes in wages, hours, and working conditions. There was no attempt to explain why Giant Eagle believed this unilateral change in a significant employee benefit did not require consultation with the Union.

In short, there was nothing in the materials from which an employee could reasonably discern that this announcement of a massive unilateral change to retirement benefits was not in derogation of or even retaliation for the recent decision by employees, in the face of employer disapproval, to have the union represent them on precisely such matters. I think this is the case, even if I accept, which I do, the Respondent's contention that the mailings were inadvertently sent to the unit employees as part of a larger mailing to thousands of nonunion employees. Of course, it is well-settled that in evaluating the coercive tendency of employer pronouncements to employees, the Board does not consider either the motivation behind the remarks or their actual effect. *Westwood Health Care Center*, 330 NLRB 935, 940 fn. 17 (2000); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F.2d 1307 (7th Cir. 1998); see *Smithers Tire & Auto Testing of Texas, Inc.*, 308 NLRB 72, 72 (1992); *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981) (inquiry under Sec. 8(a)(1) is an objective one which examines not whether the employer intended, or the employee perceived, any coercive effect but whether the employer's actions would tend to coerce a reasonable employee).

Given the timing and significance of this announcement of a unilateral change in a core employee benefit—one that employees would reasonably expect would have to be bargained with the Union—the failure of the Respondent to provide information to employees that would

[13]The General Counsel does not allege a Section 8(a)(5) failure to bargain violation. Accordingly, I do not reach the Union's contention (CP Br. at 14–16) that Giant Eagle's conduct amounted to unlawful bypassing of the Union and direct dealing with employees. The General Counsel has not alleged direct dealing or bypassing. The General Counsel controls the theory of the case, which the charging party is powerless to enlarge upon or otherwise change. *Zurn/ N.E.P.C.O.*, 329 NLRB 484, 484 (1999); *Kimtruss Corp.*, 305 NLRB 710, 711 (1991).

explain and mitigate the coercive tendency of such an announcement, leaves it in violation of Section 8(a)(1) of the Act.[14]

CONCLUSIONS OF LAW

1. The Respondent Giant Eagle, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party United Food and Commercial Workers Union, Local 23, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. On or about September 26, 2016, and thereafter, the Respondent violated Section 8(a)(1) of the Act by conditioning the preelection disclosure of details about upcoming wage and benefits changes on the employees seeking and securing a waiver from the Union of the right to file charges or objections over the preelection disclosure of the information.

4. On or about September 29, 2016, the Respondent violated Section 8(a)(1) of the Act by announcing that it was conditioning consideration of the application of an employee for a promotion on the employees seeking and securing a waiver from the Union of the right to file charges or objections in the event the employee was granted the promotion.

5. On or about November 9, 2016, the Respondent violated Section 8(a)(1) of the Act by announcing unilateral changes in retirement benefits to employees.

6. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed

[14]The circumstances here are analogous in many ways to the situation of an employer announcing a unilateral benefit to employees in the midst of a representation election. In that situation "the Board will infer that an employer's announcement or grant of benefits during the critical period before a representation election is coercive, but the employer may rebut that inference by establishing an explanation other than the pending election for the timing of the announcement or bestowal of the benefit." *Divi Carina Bay Resort*, 356 NLRB 316 (2010). By the same token, in the immediate aftermath of a successful representation election, an employer announcing a significant unilateral change should be required to provide context and information about it that would mitigate the reasonable tendency of it to appear to employees as retaliatory or a rejection of union representation.

electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 26, 2016. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 6 of the Board what action it will take with respect to this decision

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Giant Eagle, Inc., Robinson Township, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Conditioning the preelection disclosure of details about upcoming wage and benefits changes on the employees seeking and securing a waiver from the Union of the right to file charges or objections over the preelection disclosure of the information.

(b) Announcing the conditioning of consideration of the application of an employee for a promotion on the employees seeking and securing a waiver from the Union of the right to file charges or objections in the event the employee is granted the promotion.

(c) Announcing to employees that it will make unilateral changes to their retirement benefits.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Settlers Ridge facility in Robinson Township, Pennsylvania, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall

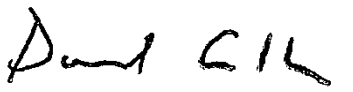
[15]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 26, 2016.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 14, 2018



David I. Goldman
U.S. Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT condition the preelection disclosure of details about upcoming wage and benefits changes on employees seeking and securing a waiver from the Union of the right to file charges and objections over the disclosure of the information.

WE WILL NOT announce that we are conditioning consideration of the application of an employee for a promotion on employees seeking and securing a waiver from the Union of the right to file charges or objections in the event the employee is granted the promotion.

WE WILL NOT announce to you that we are making unilateral changes in your retirement benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

GIANT EAGLE, INC.
(Employer)

Dated _____ By _____
(Representative)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the

Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

William S. Moorhead Federal Building, Room 904, Pittsburgh, PA 15222-4111
(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/06-CA-188991 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (412) 690-7117.